

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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W. L. WILSON, EMIL E. LENGUETIN, FRED F.  
CONNOR, JOHN A. BLOOM, LAWRENCE  
HOBRECHT and BENJ. F. CURRIER,  
Petitioners,

vs.

THE CONTINENTAL BUILDING AND LOAN  
ASSOCIATION, a Corporation, et al.,  
Respondents.

In the Matter of CONTINENTAL BUILDING AND  
LOAN ASSOCIATION, Bankrupt.

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**P**etition for **R**evision


Under Section 24b of the Bankruptcy Act of Congress, Approved  
July 1, 1898, to Revise, in Matter of Law, of a  
Certain Order of the United States District  
Court for the Northern District  
of California, First  
Division.

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**Filed**

JAN 31 1916

**F. D. Monckton**  
Clerk



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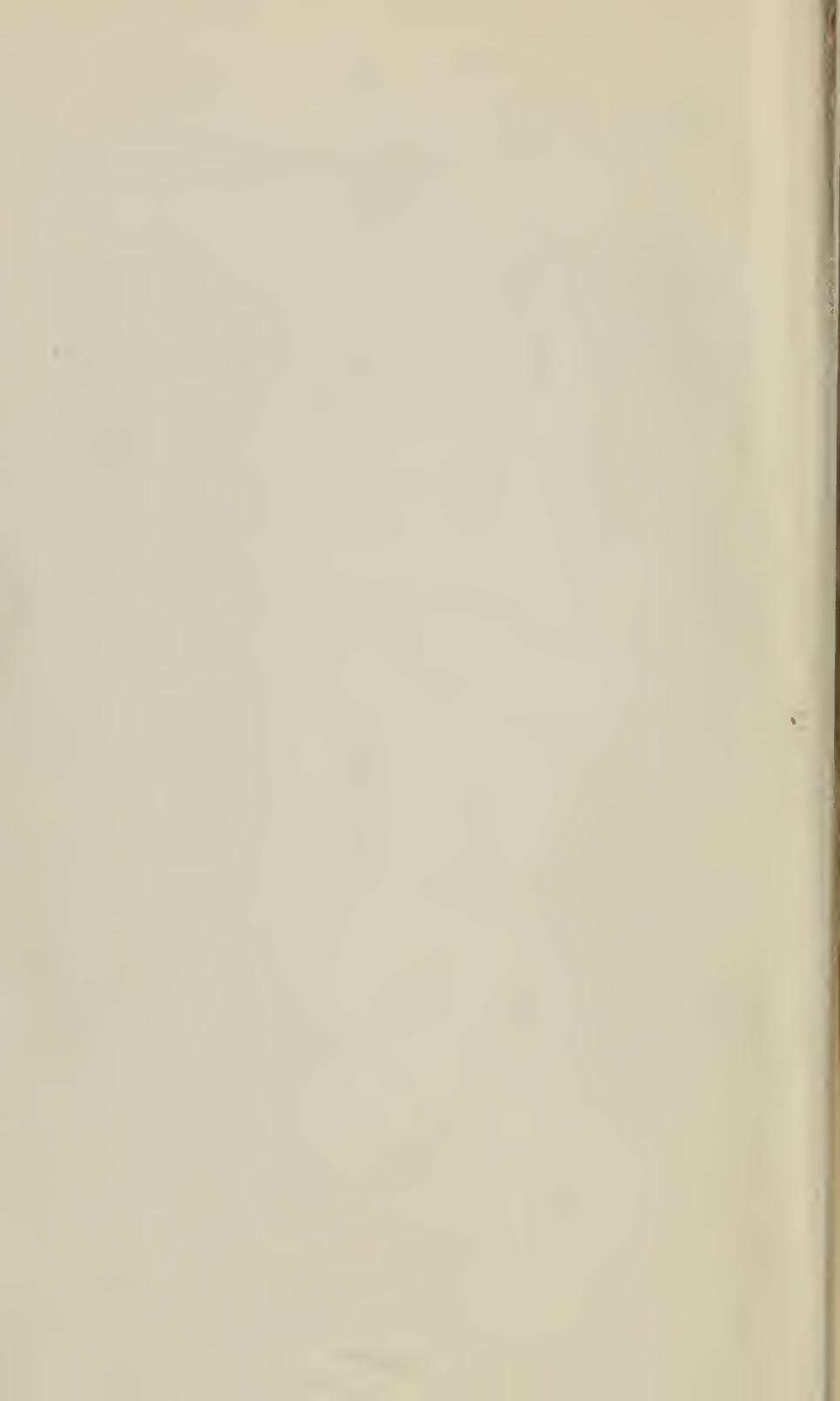


# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

|  | Page |
|--|------|
| Certificate of Clerk U. S. District Court to Cer-<br>tain Documents to be Used on Petition for<br>Revision . . . . .         | 49   |
| Notice of Filing of Petition for Review . . . . .  | 9    |
| Notice of Filing of Petition for Review . . . . .  | 11   |
| Opinion and Order Affirming Order of Referee<br>Disapproving Selection of Trustee . . . . .                                  | 47   |
| Petition to Review . . . . .   | 1    |
| Petition for Review of Order of Referee Dis-<br>approving Election of Anglo-California<br>Trust Company as Trustee . . . . . | 17   |
| Praeceptum for Transcript on Petition for Review<br>to the Circuit Court of Appeals of the<br>United States . . . . .        | 15   |
| Referee's Certificate on Petition to Review . . . .  | 20   |
| Transcript of Record in Support of Petition for<br>Revision . . . . .  | 13   |



*In the United States Circuit Court of Appeals for the  
Ninth Circuit.*

No. 9509.

In the Matter of the CONTINENTAL BUILDING  
AND LOAN ASSOCIATION,  
In Bankruptcy.

**Petition to Review.**

To the Honorable, the Judges of the United States  
Circuit Court of Appeals, for the Ninth Circuit:

The petition of W. L. Wilson, Emil E. Lenguetin,  
Fred F. Connor, John A. Bloom, Lawrence Hobrecht  
and Benj. F. Currier, creditors of said bankrupt, re-  
spectfully shows:

I.

That the above-named bankrupt was at all of the  
times hereinafter referred to and still is a building  
and loan corporation organized under and by virtue  
of the laws of the State of California governing build-  
ing and loan associations.

II.

That on the 9th day of August, 1915, the said  
Continental Building and Loan Association was duly  
adjudged a bankrupt by an order of the District  
Court of the United States for the Northern District  
of California, Ninth District thereof, duly given and  
made on that date; and that a further order of said  
Court duly given and made upon that date, all further  
proceedings in said matter were referred to Armand  
B. Kreft, referee in bankruptcy, sitting in the city  
and county of San Francisco.

## III.

That prior to the 15th day of September, 1915, your petitioners duly filed their several claims against said bankrupt estate, with the usual proof thereof, in due form as required by law.

## IV.

That on said 15th day of September, 1915, at the continued first meeting of creditors theretofore called by said referee in bankruptcy for the purpose of electing a trustee for the estate of said bankrupt, an election took place, at which said election the Anglo-California Trust Company, a corporation organized and existing under and by virtue of the laws of the State of California, and authorized to act as trustee, was elected by a great majority of all of the creditors present or represented at said meeting, both in number of creditors and in the amount of their claim.

## V.

That the only other candidates at said election were the Union Trust Company, a like corporation, and W. R. Williams, state superintendent of banks; and that the only creditors voting at said election were stockholders of said bankrupt estate; and that all of the votes cast for said Union Trust Company and said W. R. Williams were the votes of stockholders of said corporation.

## VI.

That at said meeting and after said election, said referee, by an oral order, disapproved the election of said Anglo-California Trust Company as such trustee.



VII.

That thereafter, and on September 27th, 1915, and within the time permitted by law, your petitioners did file in the United States District Court for the Northern District of California their petition wherein they did pray that the ruling of the referee be reversed and set aside and the election of said Anglo-California Trust Company as such trustee be approved and confirmed and did specify and complain of the following errors in the said order of said referee:

First. That the Anglo-California Trust Company was elected by a great majority of the creditors present or represented at said meeting, both in numbers of creditors and in the amount of their claims, but was without adequate cause disapproved.

Second. That the Anglo-California Trust Company is not disqualified to act as a trustee by reason of its having acted as the depositary of the securities of the bankrupt, if true; and that no proof was offered or made of such alleged fact, and the fact was not so found.

Third. That said Trust Company is not disqualified to act as trustee by reason of its having acted as trustee under deeds of trust for the bankrupt, if true; and that no proof was offered of such alleged fact, and the fact was not so found.

Fourth. That said Trust Company is not disqualified by reason of the necessity of the trustee herein to examine into the relations existing between the said company and the bankrupt, if true; and that no proof was offered of such alleged necessity, and the

fact was not so found.

Fifth. That the said Trust Company is not disqualified by reason of the counsel of the bankrupt being an attorney of the said company, even though true; and that no proof was offered or made of such fact, and that the fact was not so found and that such is not the fact.

Sixth. That it is not true that the election of the said Trust Company was produced or brought about by activity on the part of the officers, directors and attorneys of the bankrupt.

Seventh. That there was no evidence before the referee to show any activity on the part of the officers, directors and attorneys of the bankrupt, or any of them, to produce or bring about the election of said Trust Company.

Eighth. That there was no evidence before the referee to show that any activity on the part of the officers, directors and attorneys of the bankrupt, or any of them, did in fact influence any of the creditors to vote for said Trust Company as such trustee.

Ninth. That there was no evidence before the referee to show that such alleged activity did influence the votes of a sufficient number of creditors, if any, to change the result of the election.

Tenth. That the evidence wholly fails to show that the persons whose alleged activity was deemed obnoxious by the referee were not all stockholders with the same qualified status of creditors as those who opposed its election.

Eleventh. That the decision of the referee in effect

disfranchises the said officers, directors and attorneys.

Twelfth. That the said decision complained of in effect disfranchises the majority of the creditors for the benefit of the minority.

Thirteenth. That the decision complained of constitutes an abuse of discretion on the part of the referee.

### VIII.

That thereafter the said referee did file in said District Court his certificate on petition to review.

### IX.

That thereafter said petition came on for hearing in said District Court and was argued and submitted to said District Court; and that said District Court did thereafter, to wit, on the 9th day of November, 1915, make an order whereby it did affirm the said order of said referee; and that at the time of making said order, an opinion was filed by the Judge of said District Court setting out the reason for making said order, to which said opinion reference is hereby specially made.

### X.

That your petitioners hereby except to said order and decision of said District Court upon each and all of the grounds hereinafter specified as error; and allege that the said District Court committed error by reason of said decision to the prejudice of your petitioners, in each and all of the following respects, to wit:

First. That the Anglo-California Trust Company was elected by a great majority of the creditors

present or represented at said meeting, both in number of creditors and in the amount of their claims, but was without adequate cause disapproved.

Second. That the Anglo-California Trust Company is not disqualified to act as a trustee by reason of its having acted as the depository of the securities of the bankrupt.

Third. That said Trust Company is not disqualified to act as trustee by reason of its having acted as trustee under deeds of trust for the bankrupt.

Fourth. That said Trust Company is not disqualified by reason of the necessity of the trustee herein to examine into the relations existing between the said company and the bankrupt, if true; and that no proof was offered of such alleged necessity, and the fact was not so found.

Fifth. That the said Trust Company is not disqualified by reason of the counsel of the bankrupt being at times an attorney of the said company.

Sixth. That it is not true that the election of the said Trust Company was produced or brought about by activity on the part of the officers, directors and attorneys of the bankrupt, and there is no evidence thereof.

Seventh. That there was no evidence before the referee to show that any activity on the part of the officers, directors and attorneys of the bankrupt, or any of them, did in fact influence any of the creditors to vote for said Trust Company as such trustee.

Eighth. That there was no evidence before the referee to show that such alleged activity did in-

fluence the votes of a sufficient number of creditors, if any, to change the result of the election.

Ninth. That the persons whose alleged activity was deemed obnoxious by the referee were stockholders, with the same qualified status of creditors as all of those who opposed its election.

Tenth. That the decision in effect disfranchises the said officers, directors and attorneys.

Eleventh. That the said decision complained of in effect disfranchises the majority of the creditors for the benefit of the minority.

Twelfth. That the decision complained of constitutes an abuse of discretion.

WHEREFORE, your petitioners, being aggrieved by said order, ask that the same be revised in accordance with section 24b of the Bankruptcy Act of the United States; and that the order of said District Court and of said referee be reversed and set aside and the election of said Anglo-California Trust Company as trustee of said bankrupt be approved and confirmed; and that the record herein be certified up; and such further and other orders be made as may be proper to determine the form of the record and bring it before this Honorable Court.

B. M. AIKINS,

Attorney for Petitioners.

BENJ. F. CURRIER.

State of California,

City and County of San Francisco,—ss.

Benj. F. Currier, being first duly sworn, deposes and says: That he is one of the petitioners in the



above-entitled matter; that he has read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge except as to the matters which are therein stated upon information and belief; and that as to those matters he believes it to be true.

BENJ. F. CURRIER.

Subscribed and sworn to before me this 19th day of November, 1915.

[Seal]

ELLA L. SMITH,

Notary Public in and for the City and County of San Francisco, State of California.

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[Endorsed]: No. 2685. United States Circuit Court of Appeals for the Ninth Circuit. *W. L. Wilson, Emil E. Lenguetin, Fred F. Connor, John A. Bloom, Lawrence Hobrecht and Benj. F. Currier, Petitioners, vs. The Continental Building and Loan Association, a Corporation et al., Respondents.* In the Matter of Continental Building and Loan Association, Bankrupt. Petition for Revision Under Section 24b of the Bankruptcy Act of Congress, Approved July 1, 1898, to Revise, in Matter of Law, of a Certain Order of the United States District Court for the Northern District of California, First Division.

Filed November 19, 1915.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,

Deputy Clerk.

*In the United States Circuit Court of Appeals for the  
Ninth Circuit.*

No. 9509.

In the Matter of CONTINENTAL BUILDING  
AND LOAN ASSOCIATION,

In Bankruptcy.

**Notice of Filing of Petition for Review.**

To CONTINENTAL BUILDING & LOAN ASSOCIATION, and NAT SCHMULOWITZ, Its Attorney:

To MERCHANTS' NATIONAL BANK OF SAN FRANCISCO, and R. P. HENSHALL, Its Attorney:

To GEORGE W. MORDECAI, in *pro. per.* and Appearing for JAMES McCULLOUGH:

To R. G. HUNT, Attorney for Certain Creditors:

To W. P. CAVITT, Attorney for Certain Creditors:

To W. D. MANSFIELD, Attorney for Certain Creditors:

To J. S. HUTCHINSON, Attorney for Certain Creditors:

To J. G. DE FORREST, Attorney for Certain Creditors:

To SIDNEY E. EHRMAN, Attorney for Certain Creditors:

To JOHN YULE, Attorney for Certain Creditors:

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that the undersigned has on behalf of the petitioners therein named, this day filed in the

office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, Northern District of California, a petition for review in the above-entitled matter, a copy of which said petition is hereto attached and made a part hereof.

Dated November 19, 1915.

B. M. AIKINS,

Attorney for Petitioners.

[Endorsed]: No. 2685. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Continental Building and Loan Association, In Bankruptcy. Notice of Filing of Petition for Review. Filed Nov. 29, 1915. F. D. Monckton, Clerk.

Service of a copy of the within notice and petition therein referred to accepted this 19th day of November, 1915.

NAT SCHMULOWITZ,

Atty. for Cont. B. & L. Assn.

GEO. W. MORDECAI,

Atty. for James McCullough.

R. P. HENSHALL,

Atty. for Merchants' Natl. Bk.

JOHN YULE,

Attorney for Certain Creditors.

J. G. DE FOREST,

Attorney for Certain Creditors.

HELLER, POWERS & EHRMAN,

Attorneys for Certain Creditors.

R. G. HUNT,

Attorney for Certain Creditors.



J. S. HUTCHINSON,

Attorney for Certain Creditors.

W. C. CAVITT,

Attorney for Certain Creditors.

WALTER D. MANSFIELD,

Attorney for Certain Creditors.

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*In the United States Circuit Court of Appeals for the  
Ninth Circuit.*

In the Matter of CONTINENTAL BUILDING  
AND LOAN ASSOCIATION,

In Bankruptcy.

**Notice of Filing of Petition for Review.**

To CONTINENTAL BUILDING & LOAN AS-  
SOCIATION and NAT SCHMULOWITZ, Its  
Attorney:

To MERCHANTS' NATIONAL BANK OF SAN  
FRANCISCO and R. P. HENSHALL, Its  
Attorney:

To GEORGE W. MORDECAI, in *pro. per.* and Ap-  
pearing for JAMES McCULLOUGH:

To R. G. HUNT, Attorney for Certain Creditors:

To HUGO D. NEWHOUSE, Attorney for Certain  
Creditors.

To W. P. CAVITT, Attorney for Certain Creditors:

To W. D. MANSFIELD, Attorney for Certain  
Creditors:

To J. S. HUTCHINSON, Attorney for Certain  
Creditors:

*W. L. Wilson et al. vs.*

To J. G. DE FORREST, Attorney for Certain Creditors:

To SIDNEY E. EHRMAN, Attorney for Certain Creditors:

To JOHN YULE, Attorney for Certain Creditors:

YOU AND EACH OF YOU ARE HEREBY NOTIFIED that the undersigned has on behalf of the petitioners therein named, this day filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, Northern District of California, a petition for review in the above-entitled matter, a copy of which said petition is hereto attached and made a part hereof.

Dated November 19, 1915.

B. M. AIKINS,

Attorney for Petitioners.

[Endorsed]: No. 2685. In the United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Continental Building and Loan Association. In Bankruptcy. Notice of Filing of Petition for Review. Filed Dec. 1, 1915. F. D. Monckton, Clerk.

November 19, 1915.

Receipt of a copy of the within Notice of Filing of Petition for Review, together with a copy of the Petition for Review, is hereby acknowledged this 19th day of November, 1915.

H. D. NEWHOUSE,

M. S.,

Attorney for Certain Creditors.